

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

**SUNGLASS PRODUCTS INC. d/b/a  
PERSONAL OPTICS**

**and**

**Cases 21-CA-34562  
21-CA-34732**

**LABORERS INTERNATIONAL ASBESTOS &  
TOXIC ABATEMENT, LOCAL 882, LABORERS  
INTERNATIONAL UNION OF NORTH AMERICA,  
AFL-CIO**

**Lisa McNeill, Atty.**, Los Angeles, California,  
Counsel for the General Counsel  
**Carlos Perez, Atty.**, Reich, Adell, Crost & Cvitan,  
Los Angeles, California, Counsel for the  
Charging Party  
**George S. Howard, Jr., Atty.**, Pillsbury Winthrop, LLP,  
San Diego, California, Counsel for Respondent

**DECISION  
Statement of the Case**

LANA H. PARKE, Administrative Law Judge. This case was tried in Los Angeles, California on July 2 and 3, 2003.<sup>1</sup> Pursuant to charges filed by Laborers International Asbestos & Toxic Abatement, Local 882, Laborers International Union of North America, AFL-CIO (the Union), the Regional Director of Region 21 of the National Labor Relations Board (the Board) issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the complaint) on September 27, 2002. The complaint alleges that Sunglass Products, Inc. d/b/a Personal Optics (Respondent) violated Sections 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to execute an agreed-upon collective-bargaining agreement and to put into effect various provisions thereof. Respondent essentially denied the complaint allegations, and asserted, as affirmative defenses, that the Union waived its right to bargain over the alleged matters, that the Union failed and refused to bargain in good faith, that ratification of the collective-bargaining agreement was a condition precedent to agreement, that Respondent detrimentally relied on Union misrepresentations, and, as to potential remedy, some unit employees were not eligible for employment in the United States at relevant times.

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<sup>1</sup> All dates are in 2001 unless otherwise indicated.

On the entire record<sup>2</sup> and after considering the briefs filed by the General Counsel, the Charging Party and Respondent<sup>3</sup>, I make the following

## FINDINGS OF FACT

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### I. Jurisdiction

Respondent, a California corporation, with facilities in Fullerton and Anaheim, California (respectively the Fullerton facility and the Anaheim facility), is engaged in the business of wholesale distribution of sunglasses and reading glasses. During the 12-month period preceding the complaint, a representative period, Respondent sold and shipped from its California locations directly to points outside the State of California goods valued in excess of \$50,000, and, during the same period, purchased and received at its California locations goods and services valued in excess of \$50,000 directly from points outside the State of California. Respondent admitted and I find it to be an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Based on lack of knowledge, Respondent denied the Union was a labor organization but stipulated that at all times since August 9, 2000, it had been the exclusive bargaining representative of employees in the unit described below. I find that at all times material herein, the Union has represented employees with respect to their hours, wages and terms and conditions of employment and has been a labor organization within the meaning of Section 2(5) of the Act.<sup>4</sup>

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<sup>2</sup> Counsel for the General Counsel's unopposed post-hearing motion to correct the transcript is granted. The motion and enclosed corrections are received as ALJ Exhibit 1.

<sup>3</sup> On August 4, 2003, Counsel for the General Counsel moved to strike Respondent's post-hearing brief as untimely under Section 102.111 of the Board's Rules. In its opposition to the motion, Respondent furnished date-stamp evidence that the Division of Judges received its brief at 4:20 p.m. on July 31, 2003, the deadline date. The brief was apparently hand-delivered; its service on the Administrative Law Judge was timely. Affidavit of proof of service attached to Respondent's brief shows that on July 31, 2003, Respondent mailed it to the parties located in Los Angeles, California from San Diego, California. According to Rule 102.114 (a), "...when filing with the Board is done by hand, the other parties shall be promptly notified of such action by telephone, followed by service of a copy in a manner designed to insure receipt by them by the close of the next business day." In her motion, Counsel for the General Counsel does not state whether the parties were notified by telephone of hand-delivery of Respondent's brief to the Division of Judges; there is no evidence such notice was not given. Although deposit in regular mail in San Diego, California of papers to be delivered the following day in Los Angeles, California may indicate an overly sanguine view of the efficiency of the United States Postal Service, I cannot find the presumption of delivery on the "next business day" is entirely without basis. Accordingly, the motion to strike is denied.

<sup>4</sup> Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

## II. Alleged Unfair Labor Practices

### A. The parties' bargaining history

On August 9, 2000, following a stipulated election conducted by the Board, the Union was certified as the representative of Respondent's employees in the following unit: All full-time and regular part-time packing, manufacturing, assembling, shipping and receiving employees employed at the Fullerton and Anaheim facilities. In preparation for bargaining between the parties, unit employees elected six employees to a negotiating committee, three as regular committee members and three as alternates. By letter dated September 28, 2000, Humberto M. Gomez (Mr. Gomez), business manager of the Union, informed Respondent that Mario Brito (Mr. Brito), union organizer/negotiator, had been assigned:

to be the Negotiator on the Union's behalf with Personal Optics. Mr. Brito will be contacting your office to set up the negotiation schedule. Mr. Brito has the authority to reach a tentative agreement with Personal Optics subject to ratification by the bargaining unit employees and the Local Union Executive Board.

Richard Steven Ruben (Mr. Ruben), attorney, served as Respondent's primary negotiator. Bargaining commenced in October 2000 and proceeded with the normal give and take of lawful collective bargaining. The Union made no proposal concerning, and the parties did not negotiate, the question of employee ratification of any agreement. On several occasions during bargaining, Mr. Brito pushed for Respondent's agreement to various proposals, saying he really needed the concessions because it would make his job easier at the time of "ratification" by the workforce. At the meeting of April 11, in response to Mr. Brito's question, Mr. Ruben said the proposed wage increase would be effective upon the first pay period following the Union's approval of the contract. Mr. Brito said some proposals were more important than others in getting a positive committee endorsement of the contract and a positive ratification vote and that a health plan was the most important. During the negotiating meeting of April 12, as reflected by Mr. Ruben's bargaining notes and testimony, the parties discussed the question of a "signing bonus" (an agreed amount to be paid each employee upon the signing of the contract) to make a contract more palatable to the Union. Mr. Brito told Respondent's negotiators that a signing bonus would soften the blow to employees of Respondent's economic proposals. Mr. Ruben noted a reminder to himself to ask the Union if it would recommend the contract to employees if Respondent agreed to a signing bonus. Thereafter, Respondent refused to agree to a health plan but made certain wage concessions and agreed to a signing bonus of \$105 per employee. As to the parties' description of the bonus, Mr. Ruben's bargaining notes specifically refer to a "signing bonus" not a ratification bonus. Mr. Brito testified that he never referred to the signing bonus as a ratification bonus during negotiation, which Mr. Ruben's notes corroborate. However, the summary of contract proposals prepared by the Union for presentation to employees includes a reference to the first wage increase occurring "upon ratification" and the information, "Once contract is ratified the employees will receive a \$105.00 bonus from the company." A summary of contract proposals prepared by Respondent also uses the term "ratification" as setting the effective dates for the bonus and the first wage increase. The evidence as a whole establishes that in reference to the bonus, the parties used the terms ratification and signing interchangeably.

The Union issued a notice to unit employees of an April 20 meeting, which read, in pertinent part:

GENERAL MEETING  
TO RATIFY OUR FIRST CONTRACT  
THIS FRIDAY WE WILL HAVE A MEETING TO EXPLAIN THE DETAILS OF OUR NEW CONTRACT.

....

THOSE WHO ARRIVE WILL DECIDE FOR EVERYONE

As noted above, summaries of contract provisions prepared by both the Union and Respondent referred to employee ratification. The Union's summary, in pertinent part, read:

- ¢ .15 increase per hour upon ratification.

.....

- Once contract is ratified the employees will receive a \$105.00 bonus from the company.

Respondent's summary noted that if employees accepted Respondent's proposal, an "Immediate Bonus \$105 Per Person" would be paid to all employees "As soon as possible after ratification."

At the April 20 meeting, unit employees expressed dissatisfaction with the lack of a medical plan in the proposed contract. Mr. Brito asked the negotiating committee if they would approve the contract. They refused. The only vote taken by the Union was within the negotiating committee. By letter dated April 23, the Union wrote to Mr. Ruben as follows:

On Friday April 20, 2001 the workers at Personal Optics and rank file [sic] negotiation committee overwhelmingly rejected the company's last proposal...Notwithstanding, the committee and workers expressed, they want to see a family medical insurance to be implemented to the contract. We understand the company is close to their best and final offer, so we request that the company forward to us their best and final offer.

By letter dated April 23, Mr. Ruben informed the Union that the rejected proposal was its "last and final proposal." By letter dated April 25, Mr. Ruben requested the Union furnish Respondent with the final vote tally on Respondent's proposal and asked how the proposal had been presented to the employees. He further wrote, in pertinent part:

I am also surprised that you have not communicated with us in the five days since the vote, other than to ask whether our final proposal was in fact our final proposal. You have not let us know how you are planning to proceed...In the event you are planning to schedule another vote in the future, I assume that you will give us the courtesy of advance notice of when the vote will take place.

Following this letter, Mr. Brito told Mr. Ruben, by telephone, that how the Union handled the contract was an internal union matter. With the intention of pressing unit employees to accept the contract, the Union asked Respondent to provide the full text of its final bargaining proposal. With cover letter dated May 2, Respondent furnished the proposal, stating in pertinent part:

Pursuant to your request, attached is the full version of the Company's final bargaining proposal. We understand that if the proposal is ratified by the bargaining unit or otherwise accepted by the Union, the Union and the Company will enter into the side letter discussed during the collective bargaining negotiations.<sup>5</sup>

The attached bargaining proposal was in the form of a complete collective-bargaining agreement (herein called the Agreement.) A cover letter to the Agreement read:

PERSONAL OPTICS' FINAL CONTRACT PROPOSAL DETERMINED  
AFTER COLLECTIVE BARGAINING NEGOTIATIONS WITH THE  
LABORER'S [sic] INTERNATIONAL UNION OF NORTH AMERICA  
(provided at Union's Request)

The introductory and final paragraphs of the Agreement read, respectively, as follows:

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2001, by and between Sunglass Products, Inc., dba Personal Optics ("Company") and the Southern California District Council of Labor (affiliated with the Laborers' International Union of North America) and its affiliated Local Union No. 882 ("Union") ("Agreement").

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This Agreement shall remain in full force and effect until and including 11:59 p.m., December 31, 2004, and thereafter from year to year, unless one party or the other gives notice, in writing, at least sixty days prior to the expiration of this Agreement of the desire to terminate this Agreement or modify its terms.

The Agreement acknowledges at Section XXII (2) that the Union and Respondent had unlimited right and opportunity to make appropriate demands and proposals and that the "understandings and agreements arrived at by the parties after the exercise of their rights and opportunities are fully set forth in this Agreement and any mutually agreed upon side letters thereto." The Agreement is silent as to unit ratification except for Sections XI (3) and XII, which read:

XI. (3) For the year 2001, the regular rate of pay for all employees who are employed as of the date of the ratification of this Agreement shall be increased by fifteen cents (\$.15) per hour. The fifteen cents (\$.15) per hour increase shall be effective as of the first day following ratification of this Agreement.

XII. Ratification Bonus

All employees who are employed by the Company as of the ratification date of this Agreement will receive a bonus of \$105.00 to be paid as soon as practicable following the ratification of the Agreement.

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<sup>5</sup> The side letter referred to was a proposed resolution of outstanding unfair labor practice charges.

On May 6, after receipt of the Agreement, Mr. Brito, and Mr. Gomez met with members of the full employee negotiating committee, both regular and alternate members. The Union representatives explained that the Agreement was the Company's best and final offer. The full committee unanimously voted by show of hands to accept the Agreement. Following approval by the Union's executive board, on May 9, Mr. Gomez had the final page of the Agreement retyped to add the subscription, "Executed on May 9, 2001," followed by signature lines for the Union and Respondent.<sup>6</sup> On May 9, Mr. Gomez signed the Agreement on the Union's signature line, and mailed the executed agreement to Mr. Ruben with the following cover letter:

Please be informed that Laborers' Local 882 has ratified the Collective Bargaining Agreement between Personal Optic and Local 882 under the authority of our International and Local Constitution and bylaws. Enclosed please find two executed copies of the Agreement. Please sign and date both copies keep one copy for your records and send one copy back to my office. The Union expects that all of this contract will be in full effect as of May 8, 2001.

Although admittedly Respondent had not withdrawn the Agreement prior to its execution by Mr. Gomez, Mr. Ruben felt the company had been taken advantage of. He felt like "an idiot, a jerk viz a viz our client." Jennifer P. Ashley (Ms. Ashley) of Mr. Ruben's office wrote to the Union by fax of May 14:

We understand that the Union has accepted Personal Optics' final collective bargaining proposal without a vote of the bargaining unit...please let us know the [constitutional] provision upon which the Union is relying to accept the Company's proposal without a vote of the bargaining unit.

The Union's constitution is silent regarding employee ratification of collective-bargaining agreements. The Union did not respond to Respondent's request for information as to its internal union constitutional authority but left a voice mail message with Ms. Ashley asking whether Respondent would sign the Agreement. Ms. Ashley, by fax dated May 16, in pertinent part responded:

As you can understand, Personal Optics is concerned about signing any agreement that was not accepted by its employees. Such concern is especially reasonable considering that prior to the Union's unilateral acceptance, we understand that the union members overwhelmingly voted to reject the Company's proposal. Thus, before Personal Optics is able to respond to any inquiry concerning its intent to sign the agreement, it is imperative that the Union provide us with the authority upon which it relied in accepting the Company's final proposal without a vote of...the represented employees. Upon receiving such authority, Personal Optics will respond to your question regarding its intent to sign the agreement.

Upon receipt of this communication, Mr. Gomez telephoned Ms. Ashley and explained that the employee negotiating committee had accepted the Agreement and that he had authority to accept the Agreement even if the bargaining unit rejected it. After their conversation, Ms. Ashley faxed another letter dated May 16 to Mr. Gomez, which stated in pertinent part:

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<sup>6</sup> The typist inadvertently substituted the time "11:50 a.m." for "11:59 p.m." in the final paragraph of the Agreement. By letter dated May 24, Mr. Gomez apologized for the typo and agreed to its correction.

Again, Personal Optics is not refusing to sign the agreement. The Company only wants to assure that its proposal was accepted in accordance with the rules and laws of the Union. Given your representation that the Constitution clearly gives you the authority to accept the proposal as you did, Personal Optics' request for a reference to the provision that confers such authority is not unreasonable...Personal Optics cannot make a decision whether to sign the agreement without reviewing the authority upon which the Union has relied to accept its proposal...

Following this communication, the Union by fax dated May 17 again requested Respondent to sign the Agreement. By fax dated May 23, Mr. Ruben responded, in pertinent part:

...[R]atification was a condition to any agreement. On many, many occasions during the negotiations, you expressly bargaining on the basis of your stated ability to obtain employee ratification based upon whether the Company would or would not agree to a specific provision or a specific monetary benefit. At the end of the negotiations, you specifically negotiated over whether the Company would make certain additional concessions based on your express arguments that the concessions would allow you to achieve the unanimous recommendation of the agreement by the three employees on the negotiating committee, and that the three employees would then vigorously speak in favor of the agreement to the membership at the ratification vote.

Furthermore, you bargaining for and obtained a "ratification" bonus...which was for the sole purpose of obtaining membership ratification. During the negotiations, we discussed the necessity and amount of such a bonus at length, and all of the discussions centered around your need for a bonus of this amount...to ensure a successful membership vote. The Company would never have, and did not, agree to pay the employees this sum without an employee acceptance of the agreement...no such bonus was agreed to by the Company in the absence of employee ratification and approval.

In conclusion, the Company will not countersign the purported "agreement"...based on two fundamental reasons: (1) there was no agreement at any time to pay \$105 per employee in the absence of any employee ratification vote in favor of the agreement, as the express reason to pay any bonus was to provide incentive for the employees to approve the agreement, and absent the need for such incentive, the Company did not and would not agree to make any such payment; and (2) your express representations and detailed course of conduct which required that the employees ratify the proposed agreement for a bona fide agreement to result.

At all times thereafter, the parties continued to hold to their respective positions: the Union that Respondent was bound to honor the Agreement; Respondent that any agreement was to be ratified by the employees and that the \$105 dollar bonus was to be paid only after employee ratification of the Agreement. In June or July, the first of three petitions seeking to decertify the Union was filed with the Regional Director.<sup>7</sup>

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<sup>7</sup> The record contains no further evidence of these petitions except that Respondent filed one of them. Presumably they were dismissed pending the outcome of the instant unfair labor practice hearing.

On August 28, the Union filed six grievances with Respondent alleging Respondent's violation of certain provisions of the Agreement. The grievances addressed the following conduct: (1) refusal to provide facility access to union representatives; (2) failure to pay the signing bonus; (3) refusal to pay wage increases provided for in the Agreement; (4) failure to remit union dues contributions, including supplemental dues and initiation fees, in accordance with the Agreement.

By fax dated August 28, Mr. Ruben responded, in pertinent part:

Since all of your [grievances] are based on the presumption that there is a Collective Bargaining Agreement, I do not believe that there are any issues which could be fruitfully discussed arising from these purported grievances. However, if you feel otherwise and believe that discussion might be beneficial, I would be happy to participate.

In the meantime, it is the company's position that there is no Collective Bargaining Agreement under which a grievance can be brought, and thus, no grievance can properly proceed.

Without altering their respective positions, the parties met during October to discuss certain unit issues. Respondent continued to profess willingness to sign the Agreement if employees ratified it. Respondent submitted a new "alternative" contract proposal to the Union, withdrawing certain economic concessions and reducing the term of the contract.

### III. Discussion

Board law is clear regarding whether a binding agreement exists where employee ratification is an issue. Employee ratification is an internal union procedure; unless the parties expressly make ratification a condition precedent to reaching a contract, it is not obligatory. If ratification is a self-imposed requirement, an employer may not refuse to sign an otherwise agreed-upon contract because of nonratification. See *United Workers of America (Apogee Coal Company)*, 338 NLRB No. 40 (2002); *Observer-Dispatch*, 334 NLRB 1067 (2001); *Sheridan Manor Nursing Home*, 329 NLRB 476, fn. 9 (1999); *Hertz Corp.*, 304 NLRB 469 (1991) [express oral bilateral agreement to submit the parties' negotiated contract to a ratification vote]; *Beatrice/Hunt Wesson*, 302 NLRB 224 (1991) [both parties agreed to require ratification by the bargaining unit members to make the tentative agreement binding.]

In the instant matter, contrary to Respondent's contention, it is clear the parties never made employee ratification a condition precedent to the Agreement. The Union stated its intention to obtain employee ratification and urged acceptance of some of its proposals because of its need to satisfy the desires of ratifying employees. However, there is no evidence that ratification was established as, or understood to be, a precondition of the Agreement; there is no testimony of any negotiating statements to that effect,<sup>8</sup> and no contract or memoranda language

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<sup>8</sup> See *C & W Lektra Bat Co.*, 209 NLRB 1038 (1974)[a stated intention to take any contract reached to the membership for approval does not constitute an agreement to make ratification a condition precedent to a collective-bargaining agreement.]

sets any such precondition.<sup>9</sup> I do not accept Respondent's argument that either the Union's urging concessions to facilitate "ratification" or references to ratification in the Agreement evidence a bilateral agreement to require ratification for a binding agreement. The Union's pressure for concessions and the Agreement's ratification references are both consistent with the Union's self-imposed intention to seek ratification. If, therefore, Respondent and the Union effectively reached complete agreement on terms and conditions of employment to cover unit employees as memorialized in the Agreement, Respondent was required to execute the Agreement upon request.

I have considered whether the parties effectively reached complete agreement on terms and conditions of employment. Respondent argues that the parties never intended the Union to be able to accept the Agreement without unit ratification, pointing out that in order to accept the Agreement, the Union "had to remove the cover page" and "create...a signature page...[making] an admitted error on the termination time." Those facts do not demonstrate that the parties did not mutually agree on all material terms of the contract. The document provided to the Union on May 2 bore the following cover-page description: PERSONAL OPTICS' FINAL CONTRACT PROPOSAL DETERMINED AFTER COLLECTIVE BARGAINING NEGOTIATIONS WITH THE [UNION]. The cover page was merely a description of the document Respondent furnished the Union. It was not relevant to any of the terms of the Agreement. The terms of the attached agreement were complete, including the termination date of the contract.<sup>10</sup> Only the initial paragraph, which left blank the date on which the Agreement would be entered into, was incomplete. Unlike the situation in *Sheridan Manor Nursing Home*, supra, the duration of the Agreement had been mutually determined. The Agreement, by its written terms, was to last through December 31, 2004. From the language in Sections XI (3) and XII, it is reasonable to infer that the parties intended the Agreement's effective date to be the date it was ratified (by whatever internal union process) and accepted by the Union. There is no evidence that either party believed there was yet any contract term to be negotiated. Indeed, in the extensive correspondence following the Union's acceptance of the Agreement, Respondent never raised a question of any outstanding or unnegotiated contract term. Its only qualification was its insistence that unit employees ratify the Agreement before Respondent sign and implement it. Accordingly, the evidence shows the parties reached complete agreement on terms and conditions of employment when the negotiating committee ratified the Agreement, and Mr. Gomez so notified Respondent on May 9.

I have considered the fact that two provisions of the Agreement specifically refer to "ratification" as the catalyst to certain payments to employees. Section XI (3) of the Agreement notes that the first-year negotiated wage increase will be effective "as of the first day following ratification of this Agreement." Section XII Ratification Bonus provides that the bonus is to be paid as soon as practicable following the ratification of the Agreement. This language certainly links the first-year wage increase effective date and the bonus to ratification of the Agreement. However, the evidence establishes that the Union did, in fact, obtain employee ratification of the Agreement and thereby met the requirements of Sections XI (3) and XII. In reaching that conclusion, I rely on several bases. There is no testimony or evidence that the parties, in

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<sup>9</sup> "Since [ratification] was not offered as a proposal, there could be no acceptance by Respondent in any event." *Id* at 1039, citing *Shreveport Garment Manufacturers*, 133 NLRB 117 (1961). In *Hertz* and *Beatrice* the parties specifically and bilaterally agreed to ratification, which agreement does not exist in the instant case. Respondent's reliance on *Hertz* and *Beatrice* is, therefore, misplaced.

<sup>10</sup> The Union's inadvertent error as to termination time was quickly rectified and has no relevance to whether an effective agreement existed.

formulating Sections XI (3) and XII, discussed how ratification was to be achieved. There is nothing to suggest the Union in any way limited itself to obtaining ratification by the full unit complement. When ratification became an issue, the Union consistently maintained that the process of ratification was an internal union matter in which Respondent had no part. In taking this position, the Union was asserting an established legal principle: "It is well settled that contract ratification votes and procedures are 'internal union affairs upon which an employer is not free to intrude.' *London Chop House, Inc.*, 264 NLRB 638, 639 (1982)..." *Sheridan Manor*, supra at 477. It was for the Union, not Respondent, to determine how to effect ratification. It was for the Union, not Respondent, to determine that ratification was achieved when the negotiating committee unanimously accepted the Agreement. The Agreement was, therefore, ratified when the negotiating committee unanimously accepted it.

Respondent argues that any remedy requiring payment of the ratification bonus and the first year wage increase would be inequitable as those contractual terms were dependent upon employee ratification, which did not take place. I cannot accept that argument. As set forth above, ratification occurred when the negotiating committee unanimously accepted the Agreement. Further, I note that the parties interchangeably used the terms "signing" and "ratification" during bargaining. Mr. Ruben's bargaining notes refer to the proposed bonus as a "signing" bonus as does his June 4 letter to the Union. Ms. Ashley's May 5 letter to the Union anticipates the Agreement being "ratified by the bargaining unit or otherwise accepted by the Union."<sup>11</sup> Further, as set forth above, Respondent and the Union never discussed how ratification was to be accomplished. It is clear the Union did not believe itself bound to obtain approval of a unit majority. Its notice to employees of the general meeting to ratify the Agreement cautioned, "Those who arrive will decide for everyone," and Mr. Brito's statements during negotiations regarding ratification focused on the negotiating committee.<sup>12</sup> The logical inference is that the parties contemplated the agreed-upon bonus as a one-time benefit to make the Agreement more palatable to employees and thereby to facilitate its acceptance but that unit majority ratification was not a condition of bonus payment. I conclude that neither the first year wage increase nor the bonus was inextricably based on full unit ratification rather than Union acceptance of the proffered terms. When the employee negotiating committee accepted (or ratified) the Agreement, Respondent had neither contractual nor legal standing to protest that the Agreement's Section XI (3) wage increase and Section XII Ratification Bonus provisions had not been met. The employee negotiating committee's acceptance of the Agreement and Mr. Gomez' signing of it on May 9, constituted a binding acceptance of Respondent's final contract offer. Upon receipt of the Union's acceptance of the Agreement, Respondent was, perforce, obliged under the Act to execute the Agreement and honor its terms. By refusing the Union's

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<sup>11</sup> I reject Respondent's argument that this statement does not show that Respondent contemplated Union acceptance could be achieved by other than employee ratification. The statement is consistent with Respondent's interchangeable use of "ratification" and "signing" in reference to the proposed bonus.

<sup>12</sup> Mr. Ruben's May 23 fax to the Union suggests Respondent also regarded the negotiating committee as key to the ratification process, noting, "...[the Union expressly argued that] concessions would allow you to achieve the unanimous recommendation of the agreement by the three employees on the bargaining committee, and that the three employees would then vigorously speak in favor of the agreement to the membership at the ratification vote."

request to sign the Agreement, and by refusing to implement its terms, Respondent refused to bargain within the meaning of Section 8(a)(5) and (1) of the Act. By refusing to process grievances under the Agreement, Respondent also refused to bargain within the meaning of Section 8(a)(5) and (1) of the Act.<sup>13</sup>

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### Conclusions of Law

1. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to execute the agreement reached with the Union on May 9, 2001.
- 10 2. Respondent violated Section 8(a)(5) and (1) of the Act by refusing, since May 9, to implement the terms of the agreement reached with the Union on May 9, 2001.
3. Respondent violated Section 8(a)(5) and (1) of the Act by refusing, since August 28, 2001, to process grievances filed by the Union pursuant to the terms of the agreement reached with the Union on May 9, 2001.

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### Remedy

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

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The recommended Order will also require that Respondent make employees whole for any loss of wages and benefits suffered as a result of its refusal to sign and abide by the terms of the agreement reached with the Union on May 9, 2001 and that Respondent make the Union whole for any unpaid membership dues as a result of Respondent's failure to honor the dues-check off provisions of the agreement reached with the Union on May 9, 2001.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>14</sup>

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### ORDER

Sunglass Products Inc. d/b/a Personal Optics, Fullerton, California, its officers, agents, successors, and assigns, shall

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<sup>13</sup> Except for those issues addressed herein, Respondent failed to introduce evidence to support its affirmative defenses and I have not considered them. As to its remedial defense that some unit employees were not eligible for employment in the United States at relevant times, I leave that issue to Compliance.

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<sup>14</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## 1. Cease and desist from

- (a) Refusing to execute the agreement reached with the Union on May 9, 2001.
- (b) Refusing, since May 9, to implement the terms of the agreement reached with the Union on May 9, 2001.
- (c) Refusing, since August 28, 2001, to process grievances filed by the Union pursuant the terms of the agreement reached with the Union on May 9, 2001.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act:

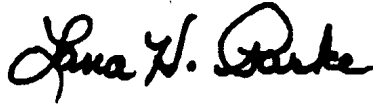
- (a) Upon request of the Union, sign and give retroactive effect to the collective-bargaining contract agreed upon between Respondent and the Union on May 9, 2001, and make employees whole, with interest, for any loss of wages and benefits suffered as a consequence of Respondent's refusal to sign that contract in May 2001; and if no such request is made by the Union, bargain, upon request, with the Union as the exclusive bargaining representative of the employees in the previously described appropriate unit and embody any understanding reached in a signed agreement.
- (b) Upon request of the Union, process grievances filed by the Union on August 28, 2001 pursuant the terms of the agreement reached with the Union on May 9, 2001.
- (c) Make the Union whole for all membership dues it has failed to receive as a result of the failure to honor the Agreement's dues-check off provisions.
- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of compensation due under the terms of this Order.
- (e) Within 14 days after service by the Region, post at its facility in Fullerton, California copies of the attached notice marked "Appendix," in both English and Spanish.<sup>15</sup> Copies of the notice, on forms provided by the Regional Director for Region 21 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 9, 2001.

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<sup>15</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

- (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated this 19<sup>th</sup> day of August, 2003, at San Francisco, CA.

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Lana H. Parke  
Administrative Law Judge

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APPENDIX  
NOTICE TO EMPLOYEES  
Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

**WE WILL NOT** refuse to sign a collective-bargaining agreement, the terms of which have been agreed to with Laborers International Asbestos & Toxic Abatement, Local 882, Laborers International Union of North America, AFL-CIO (the Union).

**WE WILL NOT** refuse to implement the terms of any collective-bargaining agreement agreed to with the Union.

**WE WILL NOT** refuse to process grievances filed by the Union pursuant the terms of an agreement reached with the Union on May 9, 2001.

**WE WILL NOT** in any like or similar manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** upon request of the Union, sign the collective-bargaining agreement agreed to on May 9, 2001, and give it retroactive effect to that date. In the event the Union does not now request that we sign such agreement, **WE WILL**, upon request of the Union, bargain collectively with it and embody any understanding reached in a signed agreement. **WE WILL** make our employees whole for any losses suffered because of our refusal to sign the collective-bargaining agreement agreed to on May 9, 2001.

**WE WILL** make the Union whole for all membership dues it has failed to receive as a result of our failure to honor the dues-check off provisions of the collective-bargaining agreement reached with the Union on May 9, 2001.

**WE WILL**, upon request of the Union, process grievances filed by the Union on August 28, 2001 pursuant to the terms of the collective-bargaining agreement reached with the Union on May 9, 2001.

Respondent, Sunglass Products Inc.  
d/b/a Personal Optics

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

11150 West Olympic Boulevard, Suite 700, Los Angeles, CA 90064-1824

(310) 235-7352, Hours: 8:30 a.m. to 5 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (310) 235-7123.